

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
SOUTHWESTERN DIVISION**

Joseph Anthony Carpenter,	)	
	)	
Petitioner,	)	<b>ORDER ADOPTING</b>
	)	<b>REPORT AND RECOMMENDATION</b>
vs.	)	
	)	
Colby Braun, Warden, North Dakota	)	
State Penitentiary,	)	Case No. 1:13-cv-153
	)	
Respondents.	)	

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The Petitioner, Joseph Anthony Carpenter, filed a petition under 28 U.S.C. § 2254 for a writ of habeas corpus by a person in state custody on December 13, 2013. See Docket No. 1. On May 16, 2014, Carpenter filed an amended petition. See Docket No. 15. Carpenter sets forth a single claim of ineffective assistance of counsel in relation to defense counsel's handling of a habitual offender notice filed by the state on the eve of trial. See Docket No. 15, p. 5. On August 27, 2014, the Respondents filed a motion to dismiss the petition. See Docket No. 25.

Magistrate Judge Charles S. Miller, Jr. reviewed the petition and the motion to dismiss and issued a Report and Recommendation on February 12, 2015. See Docket No. 29. Judge Miller recommended Carpenter's petition be dismissed because Carpenter failed to demonstrate prejudice. Specifically, Judge Miller found Carpenter failed to offer anything more than speculation that the prosecutor would have been willing to renew the plea offer which Carpenter had earlier rejected, or that the prosecutor could have been persuaded not to pursue the habitual offender designation. See Docket No. 29, p. 25-26, 28. The parties were given fourteen (14) days to file objections to the Report and Recommendation. At Carpenter's request, the time to file objections was extended to March 12, 2015. Carpenter filed an objection on March 11, 2015. See Docket No. 33.

The Court has carefully reviewed the entire record and the relevant law and finds the Report and Recommendation to be persuasive. Accordingly, the Court **ADOPTS** the Report and Recommendation (Docket No. 29) in its entirety, and **ORDERS** the following:

- 1) The Court **GRANTS** the Respondent's Motion to Dismiss (Docket No. 25) and **DENIES WITH PREJUDICE** Carpenter's Petition under 28 U.S.C. § 2254 for a Writ of Habeas Corpus by a Person in State Custody (Docket Nos. 1 and 15).
- 2) The Court certifies that an appeal from the denial of this petition may not be taken in forma pauperis because such a appeal would be frivolous and cannot be taken in good faith.
- 3) The Court finds dismissal of the petition is not debatable, reasonably subject to a different outcome on appeal, or otherwise deserving of further proceedings. Therefore, a certificate of appealability will not be issued by this Court. Barefoot v. Estelle, 463 U.S. 880, 893 n.4 (1983). If the Petitioner desires further review of his motion he may request issuance of a certificate of appealability by a circuit judge of the Eighth Circuit Court of Appeals.

**IT IS SO ORDERED.**

Dated this 11th day of March, 2015.

/s/ Daniel L. Hovland  
Daniel L. Hovland, District Judge  
United States District Court